

SENATE FISCAL AGENCY MEMORANDUM

DATE: May 10, 2007

TO: Members of the Senate Environmental Quality Subcommittee

FROM: Jessica Runnels, Fiscal Analyst

RE: Land and Water Permit Fees

As part of the FY 2007-08 budget proposal, the Governor recommended increases for many land and water permit fees. The proposed legislation would amend the Land Division Act and the Natural Resources and Environmental Protection Act, increasing fees in Part 31 (Water Resources), Part 301 (Inland Lakes and Streams), Part 303 (Wetlands Protection), Part 315 (Dam Safety), Part 323 (Shorelands Protection and Management), and Part 325 (Great Lakes Submerged Lands).

CONTENT

Natural Resources and Environmental Protection Act

In addition to increasing fees and making other changes, the proposal would create a few standard provisions in all six parts of the Natural Resources and Environmental Protection Act (NREPA) that it would amend. Under those provisions:

- Extensions for permits would be available for a fee of \$150. Extensions would not be available for permits that had expired and could not be for a term longer than five years from the date of initial issuance.
- Permits could be transferred to a new owner or revised in minor ways for a fee of \$250.
- The current sunset of October 1, 2008 on some of the fees would be removed. The proposal would adjust the fees in every year ending in "0" or "5" by an amount determined by the State Treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index (CPI) and rounded to the nearest dollar.
- Civil and/or criminal fines for violations would be increased or created.

Revenue from all of the NREPA fees discussed here is (and would continue to be) deposited into the Land and Water Management Permit Fee Fund and used exclusively for costs of land and water management programs and related administrative expenses.

Part 31 (Water Resources)

The Governor proposed increased fees for floodplain permits according to the schedule in Table 1. The current fee levels were set in 1995 and apply until October 1, 2008. The proposal would establish pre-application meetings as a new function for this program, although there are other programs in the Department of Environmental Quality (DEQ) that currently provide this option. The meetings would take place in the district office for the district that includes the project site and would review the permit application in its entirety. The applicant or authorized

representative could request that the pre-application meeting occur at the project site. The applicant could reschedule the meeting or get a refund if the request were made at least 24 hours before the scheduled meeting time. If the applicant were not represented at the meeting, then the fee would be forfeited. If the Department were not represented at the meeting, the fee would be refunded and the meeting rescheduled within 10 days.

Any written agreement provided by the Department as a result of the pre-application meeting regarding the need to obtain a permit would be binding for two years from the date of the agreement.

The proposal would increase the maximum fine for alterations of a floodplain in violation of this part from \$2,500 to \$5,000 for each occurrence. The maximum penalty for committing a minor offense would increase from \$500 to \$1,000. The maximum fine for willfully or recklessly violating a condition of a floodplain permit would increase from \$2,500 to \$5,000 per day. All of these violations are misdemeanors.

Part 301 (Inland Lakes and Streams)

The Governor proposed increased fees for inland lakes and streams permits according to the schedule in Table 2. The current fee levels were set in 1995 and apply until October 1, 2008. New fees would be created for the reconfiguration of a marina within its existing footprint and ecological restorations by State, Federal, or nonprofit conservation agencies.

Under the proposal, the DEQ would waive the annual marina slip fee for the first year of operation after new slips were constructed. If a marina were operating without a marina operating permit after January 1, 2009 and the DEQ determined that a permit could be authorized, then the slip fee would be twice the fee for the first year. For the purposes of assessing the marina operation fee, the proposal provides that 40 feet of broadside dockage would constitute one slip.

The proposal would remove new golf courses, subdivisions, and condominiums from the list of major projects, but those projects would be subject to other permit categories in Part 301.

The proposal would increase the civil fines for violations. For each day of violation of this part, the court could assess a civil fine of not more than \$10,000, which would be an increase from the current maximum fine of \$5,000. Violations of permits would be subject to a \$20,000 per day maximum fine, instead of \$10,000. The maximum fine for committing a minor offense would increase from \$500 to \$1,000. The maximum penalty for knowingly making a false statement or certification in a permit application would increase from \$10,000 to \$20,000 per day.

Part 303 (Wetlands Protection)

The Governor proposed increased fees for wetlands permits according to the schedule in Table 3. New fees would be created for minor projects, wetland impacts, and ecological restorations by State, Federal, or nonprofit conservation agencies. There is not currently a sunset on wetland permit fees. The current fee levels were set in 1998.

Under the proposal, the fee structure for the removal of vegetation in an area between the ordinary high water mark and the water's edge would be revised. Permit holders would no longer be limited to removing vegetation in an area that is not more than 100 feet wide.

Separate permits would be available for three widths: less than 50 feet, between 50 and 100 feet, and more than 100 feet. Amendments to Part 325 would establish the same structure fee for Great Lakes submerged lands.

The proposal would eliminate fees for major projects, although the projects would be subject to fees in other categories, primarily the new fees for wetland impacts.

The proposal would increase civil and criminal fines for violations. The maximum fine for a civil violation of this part or the violation of an order of the court would increase from \$10,000 to \$20,000 per day. The maximum misdemeanor fine for a violation of this part would increase from \$2,500 to \$5,000. A person who willfully or recklessly violated a condition of a permit under this part would be subject to a misdemeanor fine between \$5,000 and \$50,000 per day of violation, an increase from \$2,500 to \$25,000 per day. Subsequent violations are considered felonies and the proposal would increase the fine from not more than \$50,000 to not more than \$100,000.

Part 315 (Dam Safety)

The Governor proposed increased fees for the construction, removal, or repair of dams according to the schedule in Table 4. The proposal also would establish an annual dam safety fee that would be paid by the owner of each dam regulated under Part 315. The annual fee would vary for high and significant hazard potential dams and those considered low hazard potential dams. Dam owners would be notified of the fee assessment by February 1 and payment would have to be postmarked not later than March 15. The dam safety fee would be adjusted annual according to the Detroit CPI. There is not currently a sunset on dam safety fees. The current fee levels were set in 1989.

Under the proposal, the DEQ would assess interest on all delinquent fee payments. The late charge would be equal to 0.75% of the payment for each month past due. Failure to pay the annual fee would be considered a violation of Part 315 and the owner would be subject to civil penalties already in the law.

Part 323 (Shorelands Protection and Management)

The Governor proposed increased fees for shoreland projects in high-risk or environmental areas according to the schedule in Table 5. The current fee levels were set in 1995 and apply until October 1, 2008. The proposal also would create a new fee for an update to recession rate data on a parcel or parcels basis to reevaluate the setback requirement in high-risk erosion areas.

The proposal would establish pre-application meetings as a new function for this program. The meetings would take place in the district office for the district that includes the project site and would review the permit application in its entirety. The applicant or authorized representative could request that the pre-application meeting occur at the project site. The applicant could reschedule the meeting or get a refund if the request were made at least 24 hours before the scheduled meeting time. If the applicant were not represented at the meeting, then the fee would be forfeited. If the Department were not represented at the meeting, the fee would be refunded and the meeting rescheduled within 10 days.

Any written agreement provided by the Department as a result of the pre-application meeting regarding the need to obtain a permit would be binding for two years from the date of the agreement.

If a violation of Part 323 occurred, the proposal would authorize the DEQ to commence a civil action in the circuit court of the county in which the violation occurred to enforce compliance, restrain action contrary to an order of the DEQ denying a permit, enjoin further performance of a project conducted in violation of this part, or order the restoration of the affected area to its prior condition. The circuit court could assess a civil fine of not more than \$10,000 per day for each day of violation. The proposal specifies that a civil penalty assessed, sought, or agreed to by the DEQ would have to be appropriate to the violation.

The proposal also provides that a person who violated this part or a permit issued under it would be guilty of a misdemeanor, punishable by a fine of not more than \$20,000 per day of violation. A person who committed a minor offense would be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 per day of violation. A law enforcement officer would be authorized to serve an appearance ticket upon a person for a minor offense.

A person who knowingly made a false statement or certification in an application for a permit or a report required by a permit, or who knowingly rendered inaccurate a monitoring device required by a permit, would be guilty of a misdemeanor punishable by a fine of not more than \$20,000 per day of violation.

Part 325 (Great Lakes Submerged Lands)

The Governor proposed increased fees for projects on Great Lakes submerged lands according to the schedule in Table 6. The current fee levels were set in 1995 and apply until October 1, 2008. Under the proposal, the fee structure for the removal of vegetation in an area between the ordinary high water mark and the water's edge would be revised. Permit holders would no longer be limited to removing vegetation in an area that is not more than 100 feet wide. Separate permits would be available for three widths: less than 50 feet, between 50 and 100 feet, and more than 100 feet. Amendments to Part 303 would establish the same fee schedule for inland wetlands.

If a violation of Part 325 occurred, the proposal would authorize the DEQ to commence a civil action in the circuit court of the county in which the violation occurred to enforce compliance, restrain action contrary to an order of the DEQ denying a permit, enjoin further performance of a project conducted in violation of this part, or order the restoration of the affected area to its prior condition. The circuit court could assess a civil fine of not more than \$5,000 per day for each day of violation. The proposal specifies that a civil penalty assessed, sought, or agreed to by the DEQ would have to be appropriate to the violation.

A person who violated Part 325 or a condition of a permit or agreement, or provided false information would be guilty of a misdemeanor punishable by a fine of not more than \$10,000 per day of violation. Also, the proposal would increase the misdemeanor fine for a person who committed a minor offense from \$500 to \$1,000 per day of violation.

A person who knowingly made a false statement or certification in an application for a permit or a report required by a permit, or who knowingly rendered inaccurate a monitoring device required by a permit, would be guilty of a misdemeanor punishable by a fine of not more than \$20,000 per day of violation.

Land Division Act

The proposal would amend the Land Division Act to increase the fees for preliminary plat approval according to the schedule in Table 7. Revenue from the fees is deposited into the Land and Water Management Permit Fee Fund and used exclusively for costs of land and water management programs and related administrative expenses. The current fee levels were established in 1993. Currently, there is no sunset established for these fees.

The proposal would adjust the fees in every year ending in "0" or "5" by an amount determined by the State Treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index and rounded to the nearest dollar.

FISCAL IMPACT

The DEQ estimates that the proposal would generate annual revenue of about \$8.4 million for deposit into the Land and Water Management Permit Fee Fund. This would be an increase of \$6.2 million over to the current annual revenue of \$2.2 million. It is unknown how many applications would be received for each type of permit since the Land and Water Management Division uses a consolidated permit application that combines many different permits. Applicants are only required to pay the single highest fee for all of the permits.

In the FY 2006-07 budget for the DEQ, \$1.6 million from the Environmental Protection Fund (EPF) was appropriated to support land and water management activities since the fee revenue was expected to be insufficient to support operations. This was a temporary measure since revenue in the EPF was from a one-time fund balance transfer in FY 2005-06. The Governor's FY 2007-08 budget proposal would replace the EPF appropriation with the additional revenue from the increased land and water management fees. Under the proposed budget, the Land and Water Management Program would be supported with fees, General Fund dollars, an interdepartmental grant from the Michigan Transportation Fund for transportation-related permits, and Federal funding.

This bill has not been introduced yet. If a bill is introduced, it could vary substantially from the Governor's proposal. Please contact me if you have questions.

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Attachment

c: Gary S. Olson, Director
Ellen Jeffries, Deputy Director
Bill Bowerman, Chief Analyst

Table 1

PART 31 of NREPA WATER RESOURCES PROTECTION, FLOODPLAIN PERMITS		
Activity	Existing Fees	Proposed Fees
Minor project	\$100	\$250
All other projects	\$500	\$1,750
Engineering computations	\$1,500	\$2,500
Pre-application meeting - in office	New	Residential lot up to one acre - \$0 All others - \$150
Pre-application meeting - in field	New	Residential lot up to one acre - \$100 All others - \$250, plus \$50 for each additional acre (not to exceed \$1,000)
Minor permit revision/transfer	New	\$250
Permit extension	New	\$150

Table 2

PART 301 of NREPA INLAND LAKES AND STREAMS		
Activity	Existing Fees	Proposed Fees
Minor project, seasonal drawdown of a dam, for weed control	\$50	\$250
Seasonal drawdown of a dam first permitted after 1995	\$500	\$1,750
Subsequent drawdown	\$50	\$450
General permit	\$50	\$150
Marina expansion - 1-10 slips	\$50	\$175
Marina construction - 1-10 slips	\$100	\$350
Marina expansion - 11-50 slips	\$250	\$875
Marina construction - 11-50 slips	\$500	\$1,750
Additional slips over 50	\$10 per slip	\$35 per slip
Marina operating permit	\$50 every 3 years	\$13.50 per slip, per year
Marina maintenance dredging 10,000 yds. or more or shore protection 500 ft. or more	\$1,500	\$5,250
Marina reconfiguration	New	\$500
Major ecological restoration by State, Federal, or nonprofit conservation agency or organization	New	\$500
Major projects	\$2,000	\$7,000
All other projects not otherwise listed	\$500	\$1,750
Location of ordinary high-water mark	\$500	\$1,750
Minor permit revision/transfer	New	\$250
Permit extension	New	\$150

Table 3

PART 303 of NREPA WETLANDS PROTECTION		
Activity	Existing Fees	Proposed Fees
General permit category	\$100	\$150
Minor projects	New	\$250
Mowing of vegetation beyond exemption	\$50	\$150
All other projects	\$500	\$1,750
Major ecological restoration for State, Federal, or nonprofit conservation agency or organization	New	\$500
Wetland impacts	New	
less than 1/5 acre		\$1,000
between 1/5 and 1/3 acre		\$2,000
between 1/3 and 1 acre		\$5,000
each additional half acre or fraction thereof over the first acre		\$2,500 (not to exceed \$25,000)
Vegetation removal on Great Lakes bottomland	New	
Less than 50 ft.		\$250 (MP)
50 to 100 ft.		\$500 (IP)
Over 100 ft.		\$1,200 (IP)
Permit extension	New	\$150

MP = Minor Projects

IP = Individual Projects

Table 4

PART 315 of NREPA DAM SAFETY		
Activity	Existing Fees	Proposed Fees
Minor project	\$100	\$250
Repair, removal, or alteration	\$200	\$700
New, reconstructed, or enlarged dam		
6 to 10 feet high	\$500	\$1,750
10 to 20 feet high	\$1,000	\$3,500
20 feet or higher	\$3,000	\$10,000
Dam safety fee		
Low hazard potential	New	\$200 per year
High & significant hazard potential	New	\$750 per year
Minor permit revision/transfer	New	\$250
Permit extension	New	\$150

Table 5

PART 323 of NREPA SHORELANDS PROTECTION AND MANAGEMENT		
Activity	Existing Fees	Proposed Fees
Commercial or multifamily residential project	\$500	\$1,750
New single family residential project	\$100	\$350
Relocation of permanent structure on property in a high-risk area	New	\$350
Addition to a single family residential project or a project that has minor impact on fish and wildlife in an environmental area	\$50	\$175
All other projects not listed above	New	\$1,000
Update recession rate data on a parcel	New	\$1,000 for a parcel and \$200 for each adjacent parcel
Pre-application meeting - in office	New	Residential lot up to one acre - \$0 All others - \$150
Pre-application meeting - in field	New	Residential lot up to one acre - \$100 All others - \$250, plus \$50 for each additional acre (not to exceed \$1,000)
Minor permit revision/transfer	New	\$250
Permit extension	New	\$150

Table 6

PART 325 of NREPA GREAT LAKES SUBMERGED LANDS		
Activity	Existing Fees	Proposed Fees
General permit	\$100	\$150
Minor permit	50	250
Mowing of vegetation beyond the exceptions	50	150
Marina expansion - 1-10 slips	50	175
Marina construction - 1-10 slips	100	350
Marina expansion - 11-50 slips	250	875
Marina construction - 11-50 slips	500	1,750
Additional slips over 50	10	35
Marina maintenance dredging of 10,000 yds. or more	1,500	5,250
Major projects	2,000	7,000
All other projects	500	1,750
Certificate of Lakeward Boundary or Certificate of Accretion	200	700
Minor permit revision/transfer	New	250
Permit extension	New	150
Vegetation removal on Great Lakes bottomland	New	
Less than 50 ft		250
50 to 100 ft.		500
Over 100 ft.		1,200

Table 7

LAND DIVISION ACT		
Activity	Existing Fees	Proposed Fees
Preliminary plat review	\$500	\$1,750
Engineering computations	1,500	2,500